In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. 411

J. R. MASON,
Petitioner

vs.

EL DORADO IRRIGATION DISTRICT,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION THERETO

CHELLIS M. CARPENTER
Russ Bldg., San Francisco, Calif.
Attorney for Respondent

THOMAS MAUL,
Placerville, Calif.
Of Counsel

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The petitioner seeks a Writ of Certiorari directed to the United States Circuit Court of Appeals for the Ninth Circuit seeking to have this court again review questions decided time and again in proceedings brought under the provisions of Chapter 9 of the National Bankruptcy Act of 1898 as amended.

With the possible exception of the third point raised by petitioner, no new questions are presented to this court, and

all the matters and questions raised by petitioner are long since res adjudica.

The fact that this is merely an attempt to once more persuade this court to again review said Chapter 9 of the National Bankruptcy Act and to again inquire into the constitutionality of its provisions, is indicated by a very pertinent statement of petitioner appearing in the second paragraph of page 6 of his petition. Said statement being as follows:

> "The pith of conflict here is whether real property and its 'rents, issues and profits' are exclusively subject to the law of the Sovereign State in which it is situate."

Thus, it will be seen that petitioner, who in other former proceedings, being ably represented by counsel, questioned the constitutionality of said act and all of its provisions, is once more in this proceeding attempting to have this court reverse its former decisions and the decisions of many Circuit Courts of Appeal upholding the constitutionality of the act in question and proceeedings thereunder.

ANSWER TO FIRST, SECOND AND FOURTH PROPOSITIONS PRESENTED BY PETITIONER

The first, second and fourth questions raised by the petitioner in this proceeding are clearly res adjudica, having been before this court in a former petition for Writ of Certiorari, resulting from the entry of the interlocutory decree and all of said three points having been decided adversely to the position of the petitioner time without number.

> Thomas vs. El Dorado Irrigation District, 126 Fed. (2d) 922.

In the case just cited petitioner was a party to the proceeding and petition for writ of certiorari was denied in the October 1942 term of this court.

See U. S. vs. Bekins, 304 U. S. 27 in which the constitutionality of the act in question was raised and decided adversely to petitioner.

Mason vs. Anderson Cottonwood Irrigation District 126 Fed. (2d) 921.

Mason vs. Palo Verdi Irrigation District, 132 Fed. (2d) 714.

Nolander vs. Butte Valley Irrigation District, 132 Fed. (2d) 704.

Lorber vs. Vista Irrigation District, 127 Fed. (2d) 628.

Newhouse vs. Corcoran Irrigation District, 114 Fed. (2d) 690.

ANSWER TO THIRD POINT RAISED BY PETITIONER

Entry of Final Without Notice

Petitioner complains of the ruling of the Ninth Circuit Court of Appeals to the effect that the entry of the final decree without notice to petitioner is invalid and that petitioner's proposition is "without merit." Petitioner cites Section 58 of the Bankruptcy Act and several decisions thereunder, but Respondent desires to point out that Section 58 has reference to notice given to creditors in bankruptcy under proceedings not instituted pursuant to the provisions of Chapter IX.

Chapter IX is a proceeding in itself and fundamentally different than the proceedings with which Section 58 and Subdivisions a and b of Section 14 of the Bankruptcy Act are concerned. And the decisions cited by petitioner in support of his claim are decisions which relate to said Subdivisions a and b of Section 14 and Section 58 of the Bankruptcy Act. Said sections do specifically provide for notice, whereas Subdivision

f, Section 83 of the Bankruptcy Act makes no mention of notice whatsoever, but reads as follows:

> "(f) If any interlocutory decree confirming the plan is entered as herein provided, the plan and said decree confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. *And thereupon the court shall enter a final decree* (italics ours) determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it whether secured or unsecured, and whether or not their claims have been filed or evidenced, and, if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it."

Attention is particularly called to the language which Respondent has set out in italics and contained in the section just cited, indicating that after compliance with the terms of the interlocutory, the Court shall "thereupon" enter the final.

Thus, it will be seen that no preliminary notice to the creditors, prior to the entry of the final, is required by the terms of the act, and that the action of the Court in entering the final is practically automatic. Petitioner complains that the decree cancels, annuls and holds for naught his bonds, but it is pointed out that provision is made for the petitoner to receive exactly the same amount, for such cancellation and annulment, that all other creditors have received, and it might be pertinent to ask if that decision did or accomplished any more than is

provided for in Subdivision f, Section 83, Chapter IX which provides that the District shall be "discharged from all debts and liabilities dealt with in the plan."

As pointed out in the decision of the Circuit Court of Appeals in this matter, page 32 and 33, Transcript of Record, the appellant (petitioner in this proceeding) does not claim any harm suffered by himself because of the asserted omission.

> See Bekins vs. Lindsay Strathmore Irrigation District (CCa 9) 114 Fed. (2d) 680.

In connection with this question it seems that a quotation from Mason vs. Palo Verdi Irrigation District, 132 Fed. (2d) 714 is pertinent, for there the Court said:

> "The court did not attempt to nor did it alter the interlocutory decree in any manner. It did as it says it did, construe, interpret, and apply the part of the interlocutory decree according to its 'true intent and meaning' in order to make plain that a strained, unjust and inconsistent construction argued for by appellant should not be followed. Essentially the same situation arose in Mason vs. Anderson Cottonwood, supra."

The same situation is true in the instant case. The final decree did nothing and attempted nothing that the interlocutory decree (which had theretofore been affirmed on appeal and certiorari in relation to the same denied by this court) did not do, and petitioner was not injured by the interlocutory decree.

> Thomas vs. El Dorado Irrigation District, (Supra).

In fact, Subdivision f of Section 83 of the Act in itself provided that upon the compliance with the interlocutory decree, the District was discharged and relieved of all liability with reference to the bonds in question.

CONCLUSION

Petitioner having raised no points that have not heretofore been decided by this court and Circuit Courts of Appeal, except the question of notice, and since notice is not provided for and no harm shown as a result of the lack of notice, it is respectfully submitted that the petiiton of J. R. Mason for Writ of Certiorari should be denied.

Respectfully submitted,

CHELLIS M. CARPENTER
Russ Bldg., San Francisco, Calif.
Attorney for Respondent

THOMAS MAUL,
Placerville, Calif.
Of Counsel